KANAGASINGAM ANANTHAM v. TIMBALAN MENTERI DALAM NEGERI, MALAYSIA & ORS

COURT OF APPEAL, PUTRAJAYA
ZALEHA YUSOF JCA
HANIPAH FARIKULLAH JCA
KAMALUDIN MD SAID JCA
[CIVIL APPEAL NO: P-01(A)-390-06-2018]
13 MARCH 2019

CRIMINAL LAW: *Dangerous Drugs (Special Preventive Measures) Act 1985 – Section 5(4) – Restriction order issued against appellant restricting freedom of movement – Whether there was non-compliance of procedure – Whether inquiry report by inquiry officer submitted to Home Minister within reasonable time or with convenient speed – Whether there was time prescribed under s. 5(4) for inquiry report to be submitted – Whether s. 54(2) of Interpretation Acts 1948 and 1967 only applies when prescribed occasion arises – Whether whole process from time of arrest and detention until Home Minister made restriction order complied with 60 days prescribed under s. 3(2) of Dangerous Drugs (Special Preventive Measures) Act 1985 – Whether order made valid and enforceable*

The appellant was arrested pursuant to s. 3(1) of the Dangerous Drug (Special Preventive Measures) Act 1985 ('the SPM Act'). The Deputy Minister of Home Affairs issued a restriction order against the appellant for two years under s. 6(3) of the SPM Act, restricting him to Mukim Muar and during the two years' period, the appellant must comply with conditions in the restriction order and the appellant could not leave the area without the authority of the State Commissioner of Police. An application for judicial review under O. 53 Rules of Court 2012 was filed by the appellant, but was, however, dismissed. Hence, this appeal. The issue that arose was whether the inquiry officer had complied with the procedure provided under s. 5(4) of the SPM Act. It was the appellant's case that the inquiry officer failed to submit the report to the Deputy Minister within reasonable time or within convenient speed when the time was not prescribed.

Held (dismissing appeal)
Per Kamaludin Md Said JCA delivering the judgment of the court:

(1) Although s. 5(4) of the SPM Act employs the words 'submit his report in writing to the Minister within such period', it could not be blatantly interpreted that the report must be submitted within the convenience speed without reading further that such period 'as may be prescribed by the Minister by regulations made under the Act.' The Minister did not make any regulation to prescribe the time or period for ss. 3(3) and 5(4) of the Act. Thus, it could not be said that the law had imposed a duty on the inquiry officer to submit the inquiry report within a prescribed

time. Section 54(2) of the Interpretation Acts 1948 and 1967 only applied when the prescribed occasion arose. In the present case, the prescribed occasion never arose because there was no regulation to prescribe time. (paras 23 & 27)

(2) The pertinent point was whether 'such period' mentioned in s. 5(4) is prescribed by the Minister by regulation made under the SPM Act. There was none. The period was never prescribed by the Minister in the regulation. Until and unless 'such period' mentioned in s. 5(4) is prescribed by the Minister by the regulation, it could not be interpreted that there was a prescribed time under s. 5(4) of the SPM Act. Hence, there was no time prescribed by the Minister for the inquiry report to be submitted to the Minister. (para 24)

(3) Section 5(4) says that such period as may be prescribed by the Minister by regulations made under the SPM Act and s. 22 of the SPM Act gives the discretionary power to the Minister to make regulations to carry out the purposes of SPM Act particularly para (d) to prescribe anything which may be prescribed under this Act and when the Minister does not exercise his power to prescribe anything that may include to prescribe time on reasons best known to the Minister, the court was in no position to question the discretion of the Minister. (para 28)

(4) The appellant was arrested and detained under the preventive laws which detention was without trial and affected his personal liberty. The inquiry officer must be allowed to fully analyse and consider all the evidence taken during the inquiry before being satisfied that there was reasonable belief that the appellant had been or was associated with any activity relating to or involving the trafficking in dangerous drugs. The intention of the SPM Act providing an inquiry to be conducted by an independent person *ie*, the inquiry officer who was not a police officer was for purposes of check and balance toward the detention and investigation made by the police officer under s. 3(1) of the SPM Act. The official process of investigation or finding out information must require a certain a period of time. The reason why the period for submission of the inquiry report was or had not been prescribed by the Minister by regulation was to allow the inquiry officer to conduct the proper inquiry and to prepare a complete report to be submitted to the Minister. If the inquiry report to be submitted to the Minister was fixed within the prescribed time, it may result in the inquiry being done in a cavalier or an improper manner, which may result with the order made being prejudicial to the appellant and may be held as invalid. (para 39)

(5) The whole process from the time of arrest and detention under s. 3(1) of the SPM Act on 31 March 2017 until the Deputy Minister made the restriction order on 29 May 2017, did comply with the 60 days prescribed under s. 3(2) of the SPM Act. What mattered most was that

the inquiry report was submitted to the Deputy Minister and the Deputy Minister had considered the report and had made the restriction order well within the 60 days required under the law. Hence, the complaint by the appellant that there was a delay of 26 days by the inquiry officer to submit her report to the Deputy Minister under s. 5(4) of the SPM Act had no merit. The order made by the Deputy Minister was valid and enforceable. (paras 42 & 44)

Bahasa Malaysia *Headnotes*

Perayu ditangkap bawah s. 3(1) Akta Dadah Berbahaya (Langkah-Langkah Pencegahan Khas) 1985 ('Akta tersebut'). Timbalan Menteri Dalam Negeri mengeluarkan perintah sekatan terhadap perayu untuk dua tahun bawah s. 6(3) Akta tersebut, menyekatkannya di Mukim Muar dan untuk tempoh dua tahun, perayu harus mematuhi syarat-syarat perintah sekatan dan perayu tidak boleh meninggalkan kawasan tanpa kebenaran Pesuruhjaya Polis Negeri. Satu permohonan semakan kehakiman bawah A. 53 Kaedah-kaedah Mahkamah 2012 difailkan oleh perayu, tetapi telah ditolak. Oleh itu, rayuan ini. Isu yang timbul adalah sama ada pegawai siasatan telah mematuhi prosedur yang diperuntukkan bawah s. 5(4) Akta tersebut. Kes perayu adalah bahawa pegawai siasatan gagal menyerahkan laporan kepada Timbalan Menteri dalam tempoh masa yang munasabah atau dalam tempoh kelajuan berkesempatan dalam keadaan masa tidak ditetapkan.

Diputuskan (menolak rayuan)
Oleh Kamaludin MD Said HMR menyampaikan penghakiman mahkamah:

(1) Walaupun s. 5(4) Akta tersebut menggunakan perkataan-perkataan 'submit his report in writing to the Minister within such period','tidak boleh ditafsirkan bahawa laporan harus diserahkan dalam tempoh kelakuan yang berkesempatan tanpa membaca lebih lanjut lagi bahawa tempoh sebegitu 'as may be prescribed by the Minister by regulations made under the Act.' Menteri tidak membuat apa-apa peraturan untuk menetapkan masa atau tempoh untuk ss. 3(3) dan 5(4) Akta. Oleh itu, tidak boleh dikatakan bahawa undang-undang telah mengenakan kewajipan atas pegawai siasatan untuk menyerahkan laporan siasatan dalam tempoh masa yang ditetapkan. Seksyen 54(2) Akta Tafsiran 1948 dan 1967 hanya diguna pakai apabila peristiwa ditetapkan timbul. Dalam kes ini, peristiwa ditetapkan tidak timbul kerana tiada peraturan untuk menetapkan masa.

(2) Perkara berkaitan adalah sama ada 'such period' yang disebut dalam s. 5(4) ditetapkan oleh Menteri oleh peraturan yang dibuat bawah Akta tersebut. Terdapat tiada. Tempoh masa tidak pernah ditetapkan oleh Menteri dalam peraturan. Sehingga dan kecuali jika 'such period' yang

disebut dalam s. 5(4) ditetapkan oleh Menteri oleh peraturan, tidak boleh ditafsirkan bahawa terdapat masa yang ditetapkan bawah s. 5(4) Akta tersebut. Oleh itu, tiada masa yang ditetapkan oleh Menteri agar laporan siasatan diserahkan kepada Menteri.

(3) Seksyen 5(4) menyatakan tempoh sebegitu yang boleh ditetapkan oleh Menteri oleh peraturan bawah Akta tersebut dan s. 22 Akta tersebut memberikan kuasa budi bicara kepada Menteri untuk membuat peraturan menjalankan tujuan-tujuan Akta tersebut khususnya perenggan (d) untuk menetapkan apa-apa yang boleh ditetapkan bawah Akta ini dan apabila Menteri tidak melaksanakan kuasanya untuk menetapkan apa-apa yang mungkin termasuk tetapan masa atas alasan-alasan yang hanya diketahui Menteri, mahkamah tidak mempunyai kedudukan untuk menyoal budi bicara Menteri.

(4) Perayu ditangkap dan ditahan bawah undang-undang pencegahan yang tahanannya adalah tanpa perbicaraan dan menjejaskan kebebasan peribadinya. Pegawai siasatan harus dibenarkan untuk membuat analisis sepenuhnya dan mempertimbangkan semua keterangan-keterangan yang diambil semasa siasatan sebelum berpuas hati bahawa terdapat kepercayaan munasabah bahawa perayu telah atau dikaitkan dengan aktiviti-aktivti berhubungan atau melibatkan pengedaran dadah berbahaya. Niat Akta tersebut menyediakan untuk siasatan dijalankan oleh pihak yang bebas iaitu pegawai siasatan yang bukan pegawai polis adalah untuk tujuan memeriksa dan menyeimbangkan antara tahanan dan siasatan yang dibuat oleh pegawai polis bawah s. 3(1) Akta tersebut. Proses siasatan rasmi atau mendapatkan maklumat memerlukan tempoh masa tertentu. Alasan mengapa tempoh penyerahan laporan siasatan tidak ditetapkan Menteri oleh peraturan adalah untuk membenarkan pegawai siasatan menjalankan siasatan dengan betul dan untuk menyediakan satu laporan penuh untuk diserahkan kepada Menteri. Jika laporan siasatan diserahkan kepada Menteri dalam masa yang ditentukan, mungkin mengakibatkan siasatan dilaksanakan dengan cara yang tidak peduli atau tidak wajar, yang boleh membawa kepada perintah yang memprejudiskan perayu dan boleh diputuskan tidak sah.

(5) Proses keseluruhan dari waktu tangkapan dan tahanan bawah s. 3(1) Akta tersebut pada 31 Mac 2017 hingga Timbalan Menteri membuat perintah sekatan pada 27 Mei 2017, telah mematuhi 60 hari yang ditetapkan bawah s. 3(2) Akta tersebut. Apa yang paling bermakna adalah laporan siasatan diserahkan kepada Timbalan Menteri dan Timbalan Menteri mengambil kira laporan dan membuat perintah sekatan dalam tempoh 60 hari yang diperlukan bawah undang-undang. Oleh itu, aduan yang dibuat oleh perayu bahawa terdapat kelewatan 26 hari oleh pegawai siasatan untuk menyerahkan laporannya kepada

Timbalan Menteri bawah s. 5(4) Akta tersebut tidak mempunyai merit. Perintah yang dibuat Timbalan Menteri adalah sah dan boleh dikuatkuasakan.

Case(s) referred to:

Abdul Wahed v. Timbalan Menteri Dalam Negeri and Penguasa Kanan, Pusat Pemulihan Akhlak, Simpang Renggam, Johor Darul Takzim (Permohonan Jenayah No: BA-44-265-10-2017) (Unreported) ***(refd)***

Lock Wee Kock v. Menteri Hal Ehwal Dalam Negeri & Anor [1993] 4 CLJ 211 SC ***(refd)***

Menteri Dalam Negeri & Ors v. Gopal R Subramaniam [2017] 6 CLJ 593 FC ***(refd)***

Muhammad Jailani Kassim v. Timbalan Menteri Keselamatan Dalam Negeri Malaysia & Ors [2006] 4 CLJ 687 FC ***(refd)***

Murugan Supparamaniam v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2010] 4 CLJ 405 FC ***(refd)***

Ramoo Maniam lwn. Lembaga Pencegahan Jenayah & Yang Lain [2017] 1 LNS 1188 HC ***(refd)***

Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min [1976] 1 LNS 129 FC ***(refd)***

SK Tangakaliswaran v. Timbalan Menteri Dalam Negeri & Ors [2009] 6 CLJ 705 FC ***(refd)***

Zaidi Zakaria lwn. Lembaga Pencegahan Jenayah & Satu Lagi [2016] 1 LNS 1644 HC ***(refd)***

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 3(1), (2), (3), 5(2), (3), (4), 6(1)(a), (b), (3), 11C, 22

Federal Constitution, art. 5(2)

Interpretation Acts 1948 and 1967, s. 54(2)

Prevention of Crimes Act 1959, ss. 6, 10(2)

Rules of Court 2012, O. 53

For the appellants - MM Athimulam; M/s Athimulan & Co

For the respondent - Muhammad Sinti; Legal Advisor Office, Ministry of Home Affairs

[Editor's note: Appeal from High Court, Pulau Pinang; Judicial Review No: PA25-37-08-2017 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Kamaludin Md Said JCA:

Introduction

[1] The appellant was arrested on 31 March 2017 pursuant to s. 3(1) of the Dangerous Drug (Special Preventive Measures) Act 1985 ("the SPM Act"). The Deputy Minister of Home Affairs issued a restriction order against the appellant on 29 May 2017 for two years under s. 6(3) of the SPM Act, restricted him to Mukim Muar and during the two years' period, the appellant must comply with conditions stated in paras. (a) to (h) in the restricting order and the appellant cannot leave the area without the authority of the State Commissioner of Police.

[2] An application for judicial review under O. 53 Rules of Court 2012 was filed by the appellant on 28 July 2017 and was dismissed by the High Court on 8 June 2018. Hence, this appeal was brought by the appellant.

The Law

[3] We agreed that the restriction order made against the appellant with the conditions stipulated therein had restricted his freedom of movement which violated his personal liberty under art. 5 of the Federal Constitution. Under art. 5(2) of the Constitution, the court is to inquire into the complaint and, unless satisfied that the restriction is lawful, shall set aside the restriction order and he shall be set free. The law applicable in dealing with the appellant's personal liberty is similar to the law applicable in an application of writ of *habeas corpus*.

[4] In *Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 LNS 129; [1976] 2 MLJ 245 at pp. 250 and 251, the Federal Court had observed that the detention without trial which deprived the detained person of his fundamental liberties, the procedures relating to the detention under the statutes of which he is detained must be strictly followed:

> Preventive detention is the detention of a person without trial as opposed to punitive detention where a person is detained after a trial in a court of law in which he is proved to have committed an offence punishable under certain provisions of the penal law.
>
> Preventive detention is, therefore, a serious invasion of personal liberty. Whatever safeguard that is provided by law against the improper exercise of such power must be zealously watched and enforced by the court. **In a matter as fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty**. The material provisions of the law authorizing detention without trial must be strictly construed and safeguards which the law deliberately provides for the protection of any citizen must be literally interpreted. Where the detention cannot be held to be in accordance with the procedure established by the law, the detention is bad and the person detained is entitled to be released forthwith. Where personal liberty is concerned an applicant in applying for a writ of *habeas corpus* is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty. (emphasis added)

See also *SK Tangakaliswaran v. Timbalan Menteri Dalam Negeri & Ors* [2009] 6 CLJ 705; *Murugan Supparamaniam v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2010] 4 CLJ 405; [2010] 4 MLJ 488; *Muhammad Jailani Kassim v. Timbalan Menteri Keselamatan Dalam Negeri Malaysia & Ors* [2006] 4 CLJ 687; [2006] 6 MLJ 403.

[5] It means that every step which is necessary for the making of a detention order is subject to review by the court. With clear principle of the law in mind, the issue before us is whether the restriction order made against the appellant by the first respondent was in accordance with the procedure under the SPM Act.

The Grounds

[6] There were four grounds of appeal stated in the appellant's written submission. However, the appellant proceeded only with one main issue in respect of non-compliance of procedure under s. 5(4) of the SPM Act which according to appellant's counsel, the inquiry report by the inquiry officer was not submitted to the Deputy Minister within the reasonable time or with the convenient speed.

[7] It was submitted that the reports specified in s. 6(1)(a) and s. 6(1)(b) of the SPM Act play a very important role in making the restriction order against the appellant. The Minister must consider these reports before making the restriction order. They are therefore pre-conditions to the exercise of power under s. 6(3) of the SPM Act. They are part of the decision making process. They amount to procedural requirements governing the exercise of the discretion by the Minister in making a restriction order within the meaning of s. 11C of the SPM Act. A breach of this requirement is therefore subject to judicial review.

[8] The unique report to be considered by the Minister under s. 6(1)(b) of the SPM Act must be regular and must comply with mandatory requirement ie, s. 5(4) of the SPM Act which reads:

> (4) An Inquiry Officer shall submit his report in writing to the Minister within such period as may be prescribed by the Minister by regulations made under this Act.

[9] In the present case, ASP Jadie Yap Siew for the respondent submitted his complete report to the inquiry officer on 26 April 2017 and the first respondent, Deputy Minister of Home Affairs, received the inquiry officer's report 28 days later, ie, on 23 May 2017. In reliance of both these reports ie, the investigating report by the police officer and the inquiry officer's, only then on 29 May 2017, the Minister issued the restriction order.

[10] The appellant submitted that after receiving the complete report from the investigating officer, s. 5(4) of the SPM Act imposes a duty on the inquiry officer to submit a report in writing to the Minister at all convenient speed. Section 5(4) of the SPM Act is silent with regard to the time of which speed it must be done, and which the report must be made to take effect. It does not mean inquiring officer has a complete discretion in determining the date where no time frame is prescribed for the doing of an act in a statutory provision, it must be read with s. 54(2) of the Interpretation Acts 1948 and 1967 (Act 388) which says that:

A Computation of time

54. (1) In computing time for the purpose of any written law:

(2) Where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed and as often as the prescribed occasion arises.

B

[11] The appellant referred to various authorities which supported his contention. For example, in the case of *Ramoo Maniam lwn. Lembaga Pencegahan Jenayah & Yang Lain* [2017] 1 LNS 1188 the learned High Court judge held that under s. 6 of the Prevention of Crimes Act 1959 ("PCA"), no time frame is provided and if time is not provided, then section 54 of the Interpretation Act 1948 and 1967 (Act 388) on computation of time is applicable. The words, "as soon as possible" in s. 6 of the PCA must mean that the inquiry must be done within the convenient speed. The learned judge agreed with the applicant that the inquiry officer was informed of the applicant's remand order on 17 December 2016 but only met the applicant on 21 December 2016 and conducted the inquiry on 11 January 2017. The learned judge was of the view that the inquiry on the applicant should have been conducted as early as 17 December 2016 or when he first met the applicant on 21 December 2016. The inquiry done on 11 January 2017 was found not within the convenient speed and the delay of 25 days is unreasonable. The learned judge found that there was non-compliance of procedure under s. 6 of the PCA and on this ground the restriction order made against the applicant was set aside. The applicant's application to be released from the restriction was allowed.

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[12] In *Zaidi Zakaria lwn. Lembaga Pencegahan Jenayah & Satu Lagi* [2016] 1 LNS 1644, the Shah Alam High Court held that the inquiry done on the applicant after 11 days was unreasonable delay and the respondent had not complied with the procedure under s. 6 of the PCA. The learned judge set aside the restriction order made against the applicant and allowed the application.

F

G

[13] In another case from Shah Alam High Court in *Abdul Wahed v. Timbalan Menteri Dalam Negeri and Penguasa Kanan, Pusat Pemulihan Akhlak, Simpang Renggam, Johor Darul Takzim*, Permohonan Jenayah No. BA-44-265-10-2017 where the learned judge held that the inquiry done by the inquiry officer on the applicant after 26 days under s. 5(4) of the SPM Act was not done within the convenient speed. In that case, the inquiry officer received the report from the investigating officer under s. 3(2) of the SPM Act on 5 July 2017 and commenced physical inquiry on the applicant under s. 5(4) on 31 July 2017. The appellant submitted that *Abdul Wahed*'s case was on appeal by the Senior Federal Counsel on behalf of the respondents to the Federal Court and the appeal was dismissed on 16 August 2018.

H

I

[14] Finally, the appellant submitted that none of the affidavits affirmed by the respondents contain any explanation for the delay. The inquiry officer never give any explanation. It was further submitted that the breach of s. 5(4) of the SPM Act amounts to mandatory non-compliance with a procedural requirement governing the making of the restriction order, therefore, submitted that the said restriction order is invalid.

Our Decision

[15] The issue before us is whether the inquiry officer had complied with procedure provided under s. 5(4) of the SPM Act. It is the appellant's case that the inquiry officer had failed to submit the report to the Deputy Minister within the reasonable time or within the convenient speed when the time is not prescribed.

[16] The authorities submitted before us show that the High Courts are inclined to hold that any delay in taking certain actions under the SPM Act which provides for actions shall be carried out within certain period of time as breach of procedure which cannot be condoned and such non-compliance of procedure is fatal to the respondents.

[17] We agreed with the law as it stands. Some provisions in the statutes may prescribe time period by providing fixed hours, days or weeks and etc. for an action to be taken and in some cases it just leaves it open by providing non-prescribed time period by using the words like 'within reasonable time', 'as soon as possible' or 'forthwith' for certain action to be taken. We agreed that it is trite that where no time is prescribed within which anything shall be done, that thing shall be done with all convenient speed.

[18] The Federal Court in the case of *Menteri Dalam Negeri & Ors v. Gopal R Subramaniam* [2017] 6 CLJ 593 in giving effect of the word, "forthwith" under s. 10(2) PCA, had held as follows:

> [17] Having considered all the cases and the comments of the learned authors referred to aforesaid we would hold that the word "forthwith" in s. 10(2) of POCA is to be construed as "as soon as reasonable practicable" having considered all the facts of the case and not "then and there" or "immediate".
>
> [18] We would direct that in all applications for *habeas corpus* grounded on s. 10(2) of POCA, revolving around the word "forthwith", the court should approach the said applications in the following manner *viz*:
>
> (a) if the facts of the case show that there was a delay in the officer having custody of the applicant in serving a copy of the finding of the inquiry officer on that person, the court must then look at the affidavit of the respondent to ascertain whether the respondent has explained the delay sufficiently; and
>
> (b) the court then must consider in the circumstances of the case and the explanation for the delay, whether the officer acted without unreasonable delay and as soon as practicable.

[19] We did not find any issue with regard to s. 6 of the PCA where it provides as follows:

> 6. Person in custody to be brought before the Inquiry Officer.
>
> Every person remanded in custody under Section 4 shall, if not sooner released, as soon as possible be brought before an Inquiry Officer.

[20] We also agreed with approach taken by the learned High Court Judges in *Ramoo Maniam*'s case, *Zaidi Zakariah*'s case and *Thavaselvan Govindasamy* case submitted by the appellant because the cases concern the provision of s. 6 of PCA which requires the inquiry on the applicants shall be done as soon as possible and the words 'as soon as possible' is clearly stated under the said section which were interpreted as shall be done with the convenient speed, without unreasonable delay and as soon as practicable. Similarly, the Federal Court held in *Gopal R Subramaniam*'s case when s. 10(2) of PCA provides that the serving a copy of the finding of the inquiry officer on that person must be done 'forthwith'. The word 'forthwith' is to be construed as "as soon as reasonable practicable" having considered all the facts of the case and not "then and there" or "immediate".

[21] The appeal before us does not concern the issues in s. 6 or s. 10 of the PCA raised in the above cases. The issue in this appeal is whether the same principle applies to s. 5(4) of the SPM Act which provides that an inquiry officer shall submit his report in writing to the Minister within such period as may be prescribed by the Minister by regulations made under the SPM Act.

[22] The appellant heavily relied on the case of *Abdul Wahed*, *supra*, because the issue raised is related to s. 5(4) of the SPM Act which is relevant and similar as the issue raised in the present case. The appellant urged upon us to follow this case because according to him the case was on appeal by the Senior Federal Counsel for the respondents to the Federal Court and the appeal was dismissed on 16 August 2018. The appellant did not produce the written grounds from the Federal Court. Although the appellant produced the order of the Federal Court dated 16 August 2018, and tried to convince us that there was only one issue raised, ie, delay under s. 5 of the SPM Act, it was our view that without the written grounds, we would not be able to know whether the appeal was dismissed on the said issue raised. We cannot speculate whether the decision was based on delay issue or it could be based on some other reasons. We cannot agree with the appellant that we are bound by the decision of the Federal Court in *Abdul Wahed*'s case.

[23] Upon careful reading on the provision of s. 5(4) of the SPM Act, it is our view that caution needs to be taken before applying s. 54(2) of the Interpretation Acts 1948 and 1967 (Act 388) on the computation of time in s. 5 (4) of the SPM Act. Although s. 5(4) of the SPM Act employs the words, "submit his report in writing to the minister within such period", it cannot

be blatantly interpreted that the report must be submitted within the convenience speed without reading further that such period "as may be prescribed by the Minister by regulations made under the Act".

[24] The pertinent point is whether 'such period' mentioned in s. 5(4) is prescribed by the Minister by regulation made under the SPM Act. We find none. The period is never prescribed by the Minister in the regulation. It is our view that until and unless 'such period' mentioned in s. 5(4) is prescribed by the Minister by the regulation, it cannot be interpreted that there is a prescribed time under s. 5(4) of the SPM Act. Hence, it must be accepted that there is no time prescribed by the Minister for the inquiry report to be submitted to the Minister.

[25] The same principle applies to s. 3(3) of the SPM Act where the investigating report by the investigation officer under s. 3(2) of the SPM Act must be submitted to the inquiry officer and the Minister within such period as may be prescribed by the Minister by regulations made under the Act. The period is never prescribed by the Minister by the regulation. Hence, there is no time regulated for the investigating report to be submitted to the inquiry officer and Minister.

[26] The power for Minister to make regulations is provided under s. 22 of the SPM Act which provides as follows:

> 22. Power to make regulations
>
> (1) The Minister may make regulations to carry out the purposes of this Act.
>
> (2) In particular and without prejudice to the generality of subsection (1) such regulations may:
>
> (a) provide for the maintenance and management of places of detention and for the discipline and treatment of persons detained therein and different regulations may be made for different places of detention;
>
> (b) prescribe the form of the register, and such other forms as may be necessary or expedient to be used in connection with the matters dealt with in this Act or in any regulations made thereunder;
>
> (c) require all or any class of registered persons to carry identity cards, provide for the form, issue, production, inspection, cancellation, alteration, endorsement and replacement of any such cards, and the substitution thereof for identity cards issued to those persons or to persons of that class under any other written law, and for all other matters necessary or expedient in connection with any such cards or the carrying thereof or the enforcement of any such regulations, including the prescription

A of penalties not exceeding, in respect of any offence, a fine of five thousand ringgit or imprisonment for a term of three years or both; and

(d) prescribe anything which may be prescribed under this Act.

B **[27]** In our view, para. (d) of sub-s. (2) is the relevant power for the Minister to prescribe time frame for the investigation report to be submitted by the inquiry officer to the Minister under s. 3(3) and for the inquiry officer to submit the inquiry report to the Minister under s. 5(4) of the SPM Act. The Minister does not make any regulation to prescribe such time or period for ss. 3(3) and 5(4) of the SPM Act. When there is no regulation by the C Minister to prescribe time, it cannot be said that the law has imposed a duty on inquiry officer to submit the report within the prescribed time. Section 54(2) of the of the Interpretation Acts 1948 and 1967 (Act 388) only applies when the prescribed occasion arises. In the present case, the prescribed occasion never arose because there is no regulation to prescribe time.

D **[28]** Section 5(4) says that such period as may be prescribed by the Minister by regulations made under the SPM Act and s. 22 of the SPM Act gives the discretionary power to the Minister to make regulations to carry out the purposes of SPM Act particularly para. (d) to prescribe anything which may be prescribed under this Act and when the Minister does not E exercise his power to prescribe anything that may include to prescribe time on reasons best known to the Minister, the court is in no position to question the discretion of the Minister. The Minister is an executive who is carrying executive function under the SPM Act.

F **[29]** In the Supreme Court case of *Lock Wee Kock v. Menteri Hal Ehwal Dalam Negeri & Anor* [1993] 4 CLJ 211; [1993] 3 MLJ 691, the facts are very similar with the present case where the appellant had been arrested and detained by the police under s. 3(1) of the SPM Act, on the 57th day of his arrest, the Deputy Minister of Home Affairs issued a detention order under s. 6(1) of the SPM Act for the appellant to be detained for two years at the G Pusat Pemulihan Akhlak, Pulau Jerejak. An application for *habeas corpus* and for the release of the appellant was made to the High Court but was dismissed. The appellant appealed. It was argued on appeal that it was mandatory for the Minister to fix the periods for the submission of reports by the investigating officer and inquiry officer under sub-s. 3(3) and 5(4) of H the SPM Act, which provide that the reports shall be submitted within such period 'as may be prescribed by the Minister'. It was argued that this should be treated as mandatory and the Minister must prescribe the periods by regulations. In dismissing the appeal, the court held as follows:

(i) The words 'as may be prescribed by the Minister' found in ss. 3(3) and I 5(4) of the Act ought to be treated as conferring a power to prescribe, exercisable at the discretion of the Minister, and not as mandatory. The

fact that no period had been prescribed by the Minister for the submission of reports under ss. 3(3) or 5(4) of the Act did not vitiate the process leading to the detention order made by the Minister.

(ii) The provisions of the Act gave the police the power to detain an arrested person in police custody for a period not exceeding 60 days. In this case, the detention order was made by the Minister on the 57th day from the date of arrest and was therefore valid.

The court was of the view that:

> The use of the word 'may' or 'shall' has led to some confusion in the interpretation of provision of a statute. In ordinary usage, the word 'may' is permissive, and the word 'shall' is imperative. The courts have always construed these words with reference to the context in which it is used. In order to find out whether these words are being used in a directory or mandatory sense, the intent of the legislature should be looked into, along with the pertinent circumstances. If it appears to be the settled intention of the legislature to convey the sense of compulsion, then whether the word 'may' or 'shall' is used, it has the mandatory effect. Perhaps the task of the court in interpreting these words would be solved if the Interpretation Acts 1948 and 1967 (consolidated and revised 1989) were to contain such provisions as that found in s. 37 of the Barbados Interpretation Act
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> – Laws of Barbados Cap 1 which states:
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> > In an enactment passed or made after 16 June 1966, the expression 'shall' shall be construed as imperative and the expression 'may' as permissive and empowering.
>
> The significance of such a provision in the Interpretation Act will remind the legal draftsman to always confine the use of the word 'shall' to its mandatory sense, in contrast to the use of the word 'may' which denotes a permission or discretion.

[30] Be that as it may, in our view it does not mean that in the case of the report by the investigating officer under s. 3(3) Act and the report by the inquiry officer were never received by the Minister at any time. It is not disputed that both reports of the investigating officer under s. 3(3) Act and the inquiry officer under s. 5(4) of the SPM Act are pre-conditions to the making of detention order under s. 6(1) or restriction order s. 6(3) of the SPM Act by the Minster.

[31] Section 6(1) of the SPM Act says as follows:

> Power to order detention and restriction of person
>
> 6. (1) Whenever the Minister, after considering:
>
> (a) the complete report of the investigation submitted under subsection 3(3); and
>
> (b) the report of the Inquiry Officer submitted under subsection 5(4),

A is satisfied with respect to any person that such person has been or associated with any activity relating to or involving the trafficking in dangerous drugs, the Minister may, if he is satisfied that it is necessary in the interest of public order that such person be detained, by order direct that such person be detained for a period not exceeding two years.

B **[32]** In the appellant's case, the Minister issued the restriction order under sub-s. 6(3) of the SPM Act.

[33] The opening words in s. 6(1) of the SPM Act, is the words "Whenever the Minister after considering". The words 'whenever' according 'The Merriam – Webster Dictionary' means 'whatever time'. Oxford Advanced C Learner's Dictionary defines 'whenever' as 'at any time', 'on any occasion' or every time'. Cross refer to s. 5(4) of the SPM Act, it fortifies our view that there is no time limit for the inquiry report to be submitted to the Minister because the Minister does not prescribe the period or time by regulation. The words, "prescribe" is defined by Oxford Advanced Learner's D Dictionary as "to say what should be done or how should be done". Logically speaking, it does not matter when the inquiry report is to be submitted whether within reasonable time or at the convenient speed or not because the Minister does not regulate when the inquiry report should be submitted to him. Be that as it may, it is our view that the mandatory E requirement under s. 5(4) of the SPM Act is for the inquiry officer to submit the inquiry report to the Minister for his consideration failing which the procedure under s. 5(4) has not being complied with. We are also of the view that the words "whenever" or at "whatever time" appearing in s. 6(1) of the SPM Act, shows that the Minister is obliged to receive the reports and consider the report at any time before the expiry of the detention under F s. 3 of the SPM Act.

[34] The deputy Minister in his affidavit affirmed on 16 November 2017 at para. 7 says that on 26 April 2017, he received the complete report related to the appellant's activities from ASP Jodie Yap Siew Wen under s. 3(3) of G the SPM Act and on 23 May 2017 the report from the inquiry officer under s. 5(4) of the SPM Act. At para. 9, the Deputy Minister says that on 29 May 2017 after considering the reports he was satisfied that the appellant's activities are prejudicial to public order and directed the appellant be issued with a restriction order under s. 6(3) of the SPM Act.

H **[35]** It is not disputed that the inquiry officer had commenced the inquiry on the appellant on 8 May 2017 under s. 5(2) of the SPM Act. It is also our view that the commencement of the inquiry on 8 May 2017 after about 12 days from the date of submission of the investigating report on 26 April 2017 was within reasonable practicable time.

I **[36]** Section 5(2) of the SPM Act says as follows:

(2) Upon receiving the report under subsection 3(3), the Inquiry Officer shall inquire whether there are reasonable grounds for believing that such person has been or is associated with any activity relating to or involving the trafficking in dangerous drugs.

[37] Section 5(3) the SPM Act provides as follows:

> (3) An Inquiry Officer may, in his discretion, for the purpose of subsection (2):
>
> (a) require the attendance before him of a person detained under section 3;
>
> (b) procure and receive all such evidence, whether oral or in writing and whether the same be admissible or not under any written law for the time being in force relating to evidence or criminal procedure, which he may think necessary or desirable;
>
> (c) summon and examine witnesses on oath or affirmation, and may for those purposes administer any oath or affirmation;
>
> (d) require the production of any document or other thing in his opinion relevant to the case.

[38] The affidavit of the inquiry officer Nadia bte Mohd Izar affirmed on 8 November 2017 at para. 6, she confirmed receiving the complete investigating report from ASP Jodie Yap Siew Wen under s. 3(3) of the SPM Act on 26 April 2017. At para. 7 she said that on 8 May 2017, she conducted the inquiry on the appellant under s. 5(2) of the SPM Act. At para. 9, she said that she took statement from the appellant and after completion, the statement was read back to the appellant and the appellant understood and confirmed the statement. She also said that beside the appellant statement, she had to carefully examine evidence of witnesses who were associated with the appellant's case. At para. 10, she said that after hearing the appellant and considered the statement by the appellant and carefully examined the witnesses evidence including the complete report of investigation submitted by ASP Jodie Yap Siew Wen related to the activities of trafficking in dangerous drugs, she then prepared a written report to the Deputy Minister of which based on her inquiry, she was satisfied that there was reasonable believe that the appellant has been or is associated with any activity relating to or involving the trafficking in dangerous drugs. At para. 11, she said that she submitted the complete report to the Deputy Minister on 23 May 2017.

[39] In the above circumstances, it cannot be expected that the inquiry officer to complete inquiry report and submit the report to the Deputy Minister in a hurried manner. The appellant was arrested and detained under the preventive laws which detention is without trial and affect his personal liberty. The inquiry officer must be allowed to fully analyse and consider all the evidence taken during the inquiry before being satisfied that there was reasonable belief that the appellant has been or is associated with any activity relating to or involving the trafficking in dangerous drugs. The intention of the SPM Act providing an inquiry to be conducted by an independent person ie, the inquiry officer who is not a police officer is for purposes of check and balance toward the detention and investigation made by the police officer under s. 3(1) of the SPM Act. The official process of investigation or finding

out information must require certain period of time. We believed, the reason why the period for submission of the inquiry report is or has not been prescribed by the Minister by regulation is to allow the inquiry officer to conduct the proper inquiry, applied her mind carefully and prepare her complete report to be submitted to the Minister. If the inquiry report to be submitted to the Minister is fixed within the prescribed time, it may result in the inquiry being done in a cavalier or an improper manner. The improper application of mind by the inquiry officer in her reports to the Deputy Minister which report the Deputy Minister may consider in making a restriction order against the appellant, would result with the order made be prejudicial to the appellant and may be held as invalid.

[40] Section 3(1) of the SPM Act allows police officer to arrest and detain, any person for the purposes of investigation. Section 3(2) of the SPM Act provides that any person arrested and detained may be detained in police custody for a period not exceeding 60 days without an order of detention having been made in respect of him under sub-s. 6(1) provided that:

(i) he shall not be detained for more than twenty-four hours except with the authority of a police officer of or above the rank of Inspector;

(ii) he shall not be detained for more than forty-eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent of Police;

(iii) he shall not be detained for more than fourteen days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector-General or to a police officer designated by the Inspector-General in that behalf and the Inspector-General or police officer so designated by him, as the case may be, shall forthwith report the same to the Minister.

[41] The appellant was arrested on 31 March 2017 pursuant to s. 3(1) of the SPM Act. On 5 April 2017, the investigating officer, ASP Jodie Yap Siew Wen conducted investigation on the appellant. In the investigation, he recorded the statement of the appellant and also taken other witnesses' evidence related to the activities of the appellant in trafficking of dangerous drugs. On 26 April 2017 he submitted the complete report of the investigation to the inquiry officer and the Deputy Minister. The inquiry officer after conducting her inquiry on the appellant submitted her report to the Deputy Minister on 23 May 2017. The Deputy Minister after considering the report from the investigating officer and the inquiry officer, made a restriction order against the appellant on 29 May 2017.

[42] It is important to note that the whole process from the time of arrest and detention under s. 3(1) of the SPM Act on 31 March 2017 until the Deputy Minister made the restriction order on 29 May 2017, did comply with the 60 days prescribed under s. 3(2) of the SPM Act. Detention after 60 days by the police will be automatically unlawful except where an order

of detention under s. 6(1) or restriction order under s. 6(3) of the SPM Act having been made against the appellant by the Deputy Minster. Based on this circumstances, we were of the view that there is no time prescribed for the inquiry report to be submitted to the Deputy Minister. What matters most is the inquiry report was submitted to the Deputy Minister and the Deputy Minister has considered the report and had made the restriction order well within the 60 days required under the law. At the end of 60 days without an order under s. 6(1) or 6(3) of the Act, the appellant must be released from the detention by the police.

[43] Our view in the present case is consistent with the view held by the Supreme Court case of *Lock Wee Kock v. Menteri Hal Ehwal Dalam Negeri & Anor (supra)* where the court had held as follows:

> It will be seen that Parliament has fixed the time periods under s. 3(2) of the Act, but leaves it entirely to the Minister to fix the period within which the report is to be submitted under ss. 3(3) and 5(4) of the Act. We are quite appreciative of the reasons why Parliament leaves it to the discretion of the Minister to fix the period. The Minister has to take into consideration the amount of work and time which is taken up by the police and the inquiry officer to complete their investigation and inquiry. A simple and straight forward case may take few days to complete, while a complicated one may take longer. If the Minister fixes a time period within which the police investigating officer is to submit his report under s. 3(3) or the inquiry officer under s. 5(4) of the Act, that period may not be sufficient where the case will involve a lengthy investigation or inquiry and this may result in the reports not being complete in the sense that matters which ought to be investigated or inquired into are left out. This will impose difficulty on the Minister to act under s. 6(1) of the Act, when deciding to make or not to make the detention order.
>
> The time may come when the Minister, through his experience in dealing with this matter, can positively assess what should be the time period within which the police investigating officer or the inquiry officer can certainly complete his report and, until the Minister can come to that conclusion, he should not fix the time by exercising his powers under ss. 3(3) and 5(4) of the Act. We are of the view that for the reasons given, the words 'as may be prescribed by the Minister' found in both sections ought to be treated as conferring a power to prescribe, exercisable at his discretion, and not mandatory. The fact that no period has been prescribed by the Minister within which the reports are to be submitted by the investigating officer under s. 3(3) or by the inquiry officer under s. 5(4) of the Act does not vitiate the process leading to the detention order being made by the Minister.
>
> Under s. 3(2) of the Act, the arrested person cannot be detained for more than 60 days without a detention order being issued by the Minister. We note that in this case, the detention order was made by the Minister on the 57th day from date of arrest.

A

Conclusion

[44] Based on the aforesaid, it was our decision that the complaint by the appellant that there was a delay of 26 days by the inquiry officer to submit her report to the deputy Minister under s. 5(4) of the SPM Act had no merit. Section 5(4) of the SPM Act does not impose a duty on the inquiry officer
B to submit the inquiry report to the Deputy Minister within certain time. The words 'within such period' has not been prescribed by the Minister by regulation. It was our view that as long as the Deputy Minister had received the said report and considered it and did not make the restriction order outside the 60 days prescribed under s. 3(2) of the SPM Act, the order made
C by the Deputy Minister was valid and enforceable. Since we had found that there was no issue pertaining to the submission of the report of the inquiry officer under s. 5(4) of the SPM Act, the contention by the appellant that there was no affidavit explaining the delay in submitting the report did not arise.

D **[45]** In the result, it was our unanimous decision that the appellant's appeal was dismissed with cost of RM1,000. to be paid to the respondents and the deposit was refunded to the appellant.

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